

INITIAL STATEMENT OF REASONS
FOR RULE CHANGES UNDER THE
CORPORATE SECURITIES LAW OF 1968
CALIFORNIA FINANCE LENDERS LAW
CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT
CALIFORNIA DEFERRED DEPOSIT TRANSACTION LAW

As required by Section 11346.2 of the Government Code, the California Corporations Commissioner (Commissioner) sets forth the reasons below for the proposed amendments to Sections 260.102.8(b), 260.103.6, 260.105.15, 260.113, 260.140.8(b)(4), 260.140.42(e), 260.140.71.2, 260.140.114.1(c), 260.151(a), 260.236(c)(3)(C), 260.608, 1457(d), 1950.122.1, 2020(c), and 2030; to amend the Note after Subchapter 6 of the California Finance Lenders Law; and to repeal Sections 250.50 and 250.51 of Title 10 of the California Code of Regulations.

This regulatory action proposes rulemaking make technical and clarifying amendments to Title 10 of the California Code of Regulations under the Corporate Securities Law of 1968, California Finance Lenders Law, California Residential Mortgage Lending Act, and California Deferred Deposit Transaction Law.

General Provisions

Sections 250.50 and 250.51

In 2003, AB 1757 (Chapter 229, Statutes of 2003) repealed the Permit Reform Act of 1981 (Government Code Section 15374 et seq.), as part of a trailer to the Budget Bill of that year. The proposed amendments repeal Sections 250.50 and 250.51, which implemented the Permit Reform Act of 1981.

Corporate Securities Law of 1968:

The Commissioner regulates the offer and sale of securities under the CSL (commencing with Corporations Code section 25000). The Commissioner is proposing various clarifying changes to regulations adopted under this law.

Sections 260.140.114.1(c), 260.151(a), and 260.608(c)

The proposed amendments to these sections make grammatical and typographical corrections.

Section 260.102.8

Effective January 1, 2008, AB 886 (Chap. 399, Stats. 2007) amended Civil Code section 1189 to provide that a person making a notarial acknowledgment may no longer establish identity by personal knowledge alone. The certificate of acknowledgment further must now be executed under penalty of perjury and must be in the form set forth in Civil Code section 1189. Section 260.102.8 is proposed to be amended to incorporate the changes to Civil Code section 1189 and to make other grammatical and clarifying changes.

Section 260.103.6

In 2000, AB 1894 (Chap. 201, Stats. 2000) amended various provisions of the Corporations Code to set forth procedures for one type of business form to convert to another type of business form. The Corporate Securities Law of 1968 was also amended to clarify that the exchange of securities from a conversion of this type did not require a permit from the Corporations Commissioner, under specified circumstances set forth in Corporations Code Section 25103(h). Section 260.103.6 of the regulations sets forth a notice for issues to file to indicate reliance on the exemption in Corporations Code Section 25103(h). The proposed amendments incorporate changes to the notice under Corporations Code Section 25103(h) as a result of the change to the law made by AB 1894.

Section 260.105.15

Section 260.105.15 exempts certain securities exchange transactions from the requirement that the issuer qualify the securities transaction with the Corporations Commissioner. The proposed amendments to Section 260.105.15 change the terminology in the existing rule that is exclusive to shares of stock in a corporation, to include transactions involving other types of securities and organizational forms, in recognition of the qualification exemption in Section 25103(b) for securities issued by entities other than corporations.

Section 260.113

Section 260.113 sets forth the requirements for an application for qualification by permit under the Corporate Securities Law of 1968. The proposed amendments require that prior securities issuances exempt from qualification under subdivisions (n) and (o) of Corporations Code Section 25102 be described. The purpose of this change is to provide the Corporations Commissioner with information on past securities transactions of the issuer.

Section 260.140.8(b)(4)

Section 260.140.8 sets forth conditions on when restrictions on the transferability of securities in an entity's organizational or other applicable documents will be presumed reasonable, for purposes of the Corporations Commissioner permitting the qualification of a securities offering. Among other things, the rule covers when provisions giving the issuer the right to repurchase securities upon termination of employment are presumptively reasonable, and provides key personnel that may be subject to greater restrictions than the limitations placed on other personnel. The proposed amendments expand the description of personnel that may be subject to greater restrictions to include general partners and trustees. The purpose of this change is to provide flexibility to, and to recognize, additional types of business forms.

Section 260.140.42(e)

In 2007, the regulations regarding compensatory benefit plans were amended to provide issuers with greater flexibility in issuing securities under these rules. Section 260.140.41 regarding the grant of options under a compensatory benefit plan was amended to allow the plan to be approved by shareholders within 12 months before or after the issuance of a security under a plan. However, Section 260.140.42 regarding

the grant of securities under a purchase plan was inadvertently not amended in the same manner. The proposed amendments to Section 260.140.42(e) clarify that a compensatory purchase plan or agreement must be approved within 12 months before or after the issuance of a security under the plan.

Section 260.140.71.2

Section 260.140.71.2 sets forth the information that must be contained in an application for qualification by permit for the offer and sale of securities proposed to be issued by a mutual water company. The proposed amendments add a requirement that the application include a statement undertaking to comply with the requirements of Corporations Code Section 14300 for making the security issued by the mutual water company appurtenant to the land. The purpose of this change is to ensure that securities issued by mutual water companies pursuant to a permit from the Corporations Commissioner are appurtenant to the land.

Section 260.236(c)(3)(C)

The proposed amendments to Section 260.236(c)(3)(C) capitalize CERTIFIED FINANCIAL PLANNER pursuant to a request by the Certified Financial Planner Board of Standards, Inc., which indicates that trademark usage regulations recommend that CERTIFIED FINANCIAL PLANNER be written in capital letters, as it denotes a special status as trademark and differentiates it from other designations that are merely titles.

California Finance Lenders Law:

Note after “Subchapter 6. California Finance Lenders Law (Finance Company Rules)”

The NOTE immediately under the Subchapter 6 heading provides that only certain regulations are applicable to commercial loans of a bona fide principal amount of \$5000 or more, as further described in Section 1570 of the rules. Two rules identified in Section 1570 are missing from the NOTE. The proposed amendments fix this oversight.

Section 1457

Section 1457 sets forth limitations on the charges that a finance company may collect and receive from a borrower. Subsection (d) of Section 1457 outlines when charges may be collected and received on loans secured by real property. The proposed amendments to Section 1457 add a reference to Civil Code Section 2948.5, which further clarifies when interest may be charged on a mortgage, in order to avoid a potential conflict between Section 1457 of the rules and the Civil Code.

California Residential Mortgage Lending Act and California Deferred Deposit Transaction Law:

Sections 1950.122.1, 2020 and 2030

Effective January 1, 2008, AB 886 (Chap. 399, Stats. 2007) amended Civil Code section 1189 to provide that a person making a notarial acknowledgment may no longer establish identity by personal knowledge alone. The certificate of acknowledgment further must now be executed under penalty of perjury and must be in the form set forth in Civil Code section 1189. The proposed amendments to Section 1950.122.1 amend the consent to service of process form that is part of the application

under the California Residential Mortgage Lending Act to conform to Civil Code Section 1189. The proposed amendments to Section 2020 amend the verification section of the application form under the California Deferred Deposit Transaction Law, and the proposed amendments to Section 2030 amend the verification of the annual report filed under that law, to conform to Civil Code Section 1189.

ECONOMIC IMPACT GOVERNMENT CODE SECTION 11346.2(b)(4)

The Commissioner has made an initial determination that the proposed regulatory action of clean-up amendments to the regulations will not have a significant adverse impact on business.

FISCAL IMPACT

Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

No other nondiscriminatory cost or savings are imposed on local agencies.

TECHNICAL STUDIES RELIED UPON

The Department did not rely upon any technical, theoretical, or empirical study, reports, or other similar documents in proposing the adoption of this regulation.

ALTERNATIVES CONSIDERED

No reasonable alternatives considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the regulation is proposed. Nor would any other alternative be less burdensome to affected private persons or have less of an adverse impact on small business.